

March 27, 2014

Federal Election Commission
999 E. Street NW
Washington, DC 20463

Re: Complaint

Dear Commissioners:

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2014 MAY -5 AM 11:15

RECEIVED
FEDERAL ELECTION
COMMISSION

2014 May 2 AM 10:50

OFFICE OF GENERAL
COUNSEL

MUR # 6814
SENSITIVE

Erin Bilbray-Kohn, Democrat candidate for Nevada's 3rd congressional district, is not an unsophisticated, novice candidate. In fact, she's already been involved in a rather significant FEC controversy related to her role as both a paid political consultant and a potential candidate for federal office.

In a decision posted on July 3, 2013, the FEC determined that "Ms. Bilbray-Kohn resigned her Executive Director position with Emerge Nevada and became a paid consultant. Emerge Nevada is a nonprofit Nevada corporation that helps elect Democratic women to state and local offices. As a consultant, Ms. Bilbray-Kohn will organize and conduct trainings for Emerge Nevada, and will provide fundraising advice to the program's candidates."

The Commission ultimately decided that the Federal Election Campaign Act "would not prohibit Ms. Bilbray-Kohn from consulting for Emerge Nevada if she becomes a federal candidate."

The point is, Ms. Bilbray-Kohn is a professional campaign trainer who for years has been teaching other candidates the strategies and rules for raising money. As complicated as the campaign finance laws can be, if anyone should know them and be expected to abide by them, it's surely a professional campaign trainer such as Ms. Bilbray-Kohn.

With that in mind, Ms. Bilbray-Kohn recently sent a financial solicitation email to donors and prospective donors (attached) that failed to properly disclaim who paid for the solicitation.

Making this doubly embarrassing and egregious, the email actually included a reminder to insert the disclaimer at the bottom which Ms. Bilbray-Kohn ignored. Nevada's #2 liberal blogger, Jon Ralston, memorialized the incident in a tweet (attached).

You simply can't claim, credibly, that as a professional fundraising trainer and consultant you didn't know the rules, especially when a reminder to insert the disclaimer was clearly and prominently placed on the document before being sent out.

The Federal Election Commission website is clear about disclaimer rules and guidelines (copy attached). Ms. Bilbray-Kohn, in a direct financial solicitation, clearly ignored her own staff reminder to include a proper disclaimer. And despite being called out for it by local media, Ms.

110047M0N10004

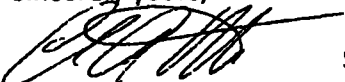
Bilbray-Kohn made no effort to correct the mistake, inform potential donors or accept any level of responsibility for her actions.

While some may say that disclaimers are unimportant or small in the scheme of a campaign (myself included), I believe that selective enforcement of this provision could lead to precedent-setting guidelines pushed by candidates for federal office using this example to skirt disclaimer rules on television, internet, direct mail and other campaign activities.

I would respectfully suggest that failure to hold Ms. Bilbray-Kohn accountable for her failure to comply with the law could open the door for candidates across the country to cite this example as valid precedent to ignore current and future disclaimer rules.

As such, I urge the Commission to take appropriate action in disciplining fundraising consultant and campaign trainer Erin Bilbray-Kohn for her inexcusable and easily avoidable failure to comply with the Federal Election Campaign Act.

Sincerely yours,


Chuck Muth

State of Nevada

County of Clark

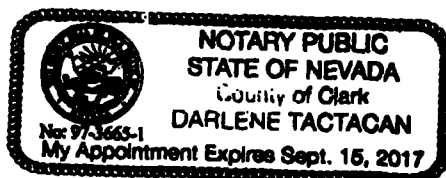
Signed and sworn to (or affirmed) before me

on (date) 04/22/2014 by Chuck Muth

(name(s) of person(s) making statement)

(Notary Stamp)


(Signature of notarial officer)



----- Forwarded Message -----

From: Erin Bilbray <erin@erinbilbray.com>

To:

Sent: Tuesday, March 11, 2014 11:18 AM

Subject: I'm in, are you?

2014 MAR -4 11:11
OFFICE

Today's the day - "I'm in." I wanted you to be one of the first to know that as you receive this I am filing to have my name placed on the ballot for Nevada's Third Congressional District. I wanted to share this important moment with you and announce that our campaign's fight for southern Nevada's struggling middle class families is officially underway.

We've already begun building our campaign and I have some exciting developments to share soon, but today we need to know that you are in this fight with me.

To mark this milestone, my team has laid down an incredible challenge: we need to get 2,000 grassroots pledges by COB on Friday. Will you help mark this turning point by adding your name to our growing list of grassroots supporters now?

I hope that I can count on you to help us collect 2,000 grassroots pledges before Friday COB. Joe Heck may have deep-pockets and high-powered friends like Karl Rove, the Koch Brothers and Speaker Boehner but I have something much more powerful. I have you.

The next nine months will surely have highs and lows -

as you may have seen, national Republican Super PACs have already begun flooding Nevada's airwaves with hundreds of thousands of dollars in ads in this race, and we know that's just the start. **But knowing that you stand by my side, I'll be ready to face whatever they throw at us.**

Our friends and neighbors in southern Nevada are struggling. We need a representative who will work for middle class families here at home -- extending unemployment benefits, and fighting for livable wages and pay equity for everyone. We need to fight for middle class families to get ahead, not just survive. I am signing my name on the dotted line today to make our campaign official. **Will you join me by adding your name to our strong list of grassroots supporters?**

Once you've signed, I hope you'll consider sharing our campaign with your friends and family -- it will take all of us working together from now to November to build our victory for Nevada's working families.

Now, let's get started,
Erin Bilbray

{{Disclaimer}}
Erin Bilbray for Congress
9101 West Sahara Ave.
Suite 105-B20
Las Vegas, Nevada 89117

If you believe you received this message in error or wish to no longer receive email from us, please [unsubscribe](#)



Jon Ralston @RalstonReports Mar 11

Also in @erinbilbray \$ pitch, the place where the standard disclaimer should go says: {Disclaimer} Oy.

#nv03 #welloiledmachine #heckofajob

Collapse

Reply Retweet Favorite More

2:02 PM - 11 Mar 2014 · Details

Tweet text

Reply to @RalstonReports @erinbilbray

Reply to @RalstonReports @erinbilbray



Jon Ralston @RalstonReports Mar 11

@erinbilbray files, sends missive saying, "The next nine months will surely have highs and lows..." Um, nine months? #nv03 #math #december

Collapse

Reply Retweeted Favorite More

1:56 PM - 11 Mar 2014 · Details

Tweet text

Reply to @RalstonReports @erinbilbray

Reply to @RalstonReports @erinbilbray

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Disclaimer Notices

What is a Disclaimer Notice?

For the purpose of this brochure, a "disclaimer" notice is defined as a statement placed on a public communication that identifies the person(s) who paid for the communication and, where applicable, the person(s) who authorized the communication.

When is a Disclaimer Required?

Basic Rule

Political Committees

Political committees must include a disclaimer on (1) all "public communications" (defined below), (2) bulk electronic mail (defined as electronic mail with more than 500 substantially similar communications) and (3) web sites available to the general public, regardless of whether the communication expressly advocates the election or defeat of a clearly identified candidate, or solicits funds in connection with a federal election (i.e., contributions for a federal candidate or federal political committee). 2

Individuals and Other Persons

A disclaimer must appear on any "electioneering communication" (defined below) and on any public communication by any person that expressly advocates the election or defeat of a clearly identified candidate or solicits funds in connection with a federal election.

Application

Specific examples of public communications that would require a disclaimer include:

Public communications coordinated with a federal candidate (i.e., in-kind contributions or coordinated party expenditures) that are paid for by a political committee or that contain express advocacy or a solicitation;

Independent expenditures;

Electioneering communications;

A communication that solicits funds for a federal candidate or a federal political committee or that contains express advocacy; and

Political committees' web sites..

Definitions

Public Communications

As defined in FEC regulations, the term "public communication" includes:

Broadcast, cable or satellite transmission;

Newspaper;

Magazine;

Outdoor advertising facility (e.g., billboard);

Mass mailing (defined as more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period);

Telephone banks (defined as more than 500 telephone calls of an identical or substantially similar nature within any 30-day period); or

Any other general public political advertising. General public political advertising does not include Internet ads, except for communications placed for a fee on another person's web site

Electioneering Communications

As defined in FEC regulations, an "electioneering communication" is a broadcast, cable or satellite communication that fulfills each of the following conditions:

- Refers to a clearly identified federal candidate;
- Is publicly distributed within 30 days before a primary election or within 60 days before a general election; and
- In the case of Congressional candidates only, is "targeted to the relevant electorate"(can be received by 50,000 or more persons in the district or state the candidate seeks to represent)

11 CFR 100.29. See also Federal Register notice 2005-29 [PDF].

Independent Expenditures

An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and is not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or their agents, or a political party committee or its agents. 11 CFR 100.16.

Coordinated Party Expenditures

Coordinated party expenditures are expenditures made by national or state party committees on behalf of their nominees in connection with the general election. Such expenditures may be coordinated with the candidate, but are reported only by the party committee that makes the expenditure. These expenditures are subject to a special monetary limit. 11 CFR 110.11(d)(1).

Exempt Party Activities

State and local party committees may engage in certain candidate-support activities without making a contribution or expenditure provided specific rules are followed. These "exempt" party activities refer to the three types of communications listed below:

- Registration and get-out-the-vote drives on behalf of the Presidential ticket;
- Campaign materials distributed by volunteers on behalf of federal candidates; and
- Certain slate cards, sample ballots and palm cards listing at least 3 candidates for public office.

11 CFR 100.80, 100.87 and 100.89; 100.140, 100.147 and 100.149 and 110.11(e).

What must the Disclaimer Say?

[illegible]☐ **Messages Authorized and Financed by a Candidate**

On a public communication that is authorized and paid for by a candidate or his/her campaign committee, the disclaimer notice must identify who paid for the message. 11 CFR 110.11(b)(1).

Example: "Paid for by the Sheridan for Congress Committee."

Messages Authorized but Not Financed by a Candidate

On a public communication that is authorized by a candidate or his/her campaign committee, but is paid for by another person, the disclaimer notice must identify who paid for the communication and indicate that the candidate authorized the message. 11 CFR 110.11(b)(2).

Example: "Paid for by the XYZ State Party Committee and authorized by the Sheridan for Congress Committee." 3

Messages Not Authorized by a Candidate

On a public communication that is not authorized by a candidate or his/her campaign committee, the disclaimer notice must identify who paid for the message, state that it was not authorized by any candidate or candidate's committee and list the permanent street address, telephone number or World Wide Web address of the person who paid for the communication. 11 CFR 110.11(b)(3).

Example: "Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate's committee."

Coordinated Party Expenditures

Pre-nomination Period

On a public communication that is made as a coordinated party expenditure before a nominee is chosen, the disclaimer notice must identify the committee that paid for the message, but need not state whether the communication was authorized. 11 CFR 110.11(d)(1).

Example: "Paid for by XYZ State Party Committee."

Post-nomination Period

Once a candidate has been nominated for the general election, the disclaimer notice must also state who authorized the communication.

Example: "Paid for by the XYZ State Party Committee and authorized by the Sheridan for Congress Committee."

The committee that actually makes the expenditure is considered to be the person who paid for the public communication even when the committee is acting as the

designated agent of a different party committee.

Exempt Party Activities

On exempt activity communications (for example, campaign materials) the disclaimer notice must identify the committee that paid for the message. 11 CFR 110.11(e).

Example: "Paid for by the XYZ State Party Committee."

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How and Where must the Disclaimer Appear?

In order to give the reader sufficient notice about the person(s) paying for or authorizing a public communication regardless of its medium, the disclaimer notice must be "clear and conspicuous" on the committee's communications, solicitations and response materials. The notice will not be considered to be "clear and conspicuous" if:

- It is difficult to read or hear; or
- The notification is placed where it can be easily overlooked.

11 CFR 110.11(c)(1).

Additional requirements are described below.

Printed Materials

On printed materials, the disclaimer notice must appear within a printed box set apart from the other contents in the communication. The print must be of a sufficient type-size to be clearly readable by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. 11 CFR 110.11(c)(2)(i), (ii) and (iii).

Example:

Paid for by the Save the Seahorses
Committee and authorized by the
□ McKay for Senate Committee.

As long as the disclaimer appears somewhere within the communication it does not have to appear on the front page or cover of multiple-paged documents. However, in the case of single-sided documents and billboards, the disclaimer must appear on the front. 11 CFR 110.11(c)(2)(iv).

Safe Harbor for "Clearly Readable"

The regulations contain a safe harbor that establishes a fixed, 12-point type size as a sufficient type size for disclaimer text in newspapers, magazines, flyers, signs and other printed communications that are no larger than the common poster size of 24 inches by 36 inches. 11 CFR 110.11(c)(2)(i). Please note, disclaimers for larger communications will be judged on a case by case basis.

Safe Harbor for "Reasonable Degree of Color Contrast"

The regulations additionally provide two safe harbor examples that would comply with color contrast requirement:

- The disclaimer is printed in black on a white background; or
- The degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

11 CFR 110.11(c)(2)(iii).4

Packaged Materials

When communications are distributed in a package or as a group, the distributing entity must evaluate each item separately in order to determine whether a disclaimer notice is required on that item. A message or ad that would require a disclaimer notice if it were distributed separately must still display the notice when it is included in a package of materials. 11 CFR 110.11(c)(2)(v). Example: A campaign poster is mailed with a campaign brochure and solicitation letter. A disclaimer notice must appear on each of these items.

Radio and Television Communications Authorized by the Candidate

Radio

A radio broadcast must include an audio statement that is spoken by the candidate. The statement must identify the candidate, and state that he or she has approved the communication. 11 CFR 110.11(c)(3)(i).

Television

Like radio broadcasts, televised communications must include an oral disclaimer spoken by the candidate in which the candidate identifies himself or herself and states that he or she has approved the communication. 11 CFR 110.11(c)(3)(ii). 5

This disclaimer can be conveyed in one of two ways:

- A full-screen view of the candidate making the statement (11 CFR 110.11(c)(3)(ii)(A)); or
- A "clearly identifiable photographic or similar image of the candidate" that appears during the candidate's voice-over statement. (11 CFR 110.11(c)(3)(ii)(B)).

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A disclaimer notice is not required on checks, receipts or similar items of minimal

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Federal Election Purpose Notification

In order to deposit undesignated contributions into its federal account, a federal committee must inform donors that their contributions will be used in connection with federal elections or that they are subject to the limits and prohibitions of the Act. The committee may satisfy this requirement by including that information in its solicitation materials. 11 CFR 102.5(a)(2)(ii) and (iii).

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"Best Efforts" Notification

Under the Act and FEC regulations, political committees must report the name, address, occupation and employer of any individual who contributes more than \$200 in a calendar year (or in an election cycle, in the case of an authorized committee) (11 CFR 104.3(a)(4)). Committees must make their "best efforts" to obtain and report this information.

To satisfy the "best efforts" requirement, a political committee must include a statement on its solicitations explaining that it is required to make its best efforts to obtain and report contributor information. This statement is referred to as the "best efforts" notification; two examples are listed below:

- Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year, or
- To comply with Federal law, we must use our best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year.

If the committee does not receive the required contributor information, it must make a follow-up request within 30 days. Any contributor information provided or otherwise available to the committee must be disclosed on FEC reports. In some cases, it may be necessary for the committee to amend previous reports. 11 CFR 104.7.

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IRS Disclosure Requirements

Under the Internal Revenue Service Code (26 U.S.C. §6113), certain tax-exempt

organizations that are not eligible to receive tax deductible charitable contributions, and whose gross annual receipts normally exceed \$100,000, must disclose in an "express statement (in a conspicuous and easily recognizable format)" that contributions to the organization are not deductible for Federal income tax purposes as charitable contributions. For more information, contact the IRS at (800) 829-3676, (202) 622-7352.

Safe Harbor for "Format of Disclosure Statement"

Print Medium

In the case of a solicitation by mail, leaflet, or advertisement in a newspaper, magazine or other print medium, the following four requirements are met;

- The solicitation includes whichever of the following statements the organization deems appropriate:
 - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
 - "Contributions or gifts to [name of organization] are not tax deductible," or
 - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- The statement is in at least the same size type as the primary message stated in the body of the letter, leaflet or ad;
- The statement is included on the message side of any card or tear off section that the contributor returns with the contribution; and
- The statement is either the first sentence in a paragraph or itself constitutes a paragraph.

Telephone

In the case of solicitation by telephone the following three requirements are met:

- The solicitation includes whichever of the following statements the organization deems appropriate:
 - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
 - "Contributions or gifts to [name of organization] are not tax deductible," or
 - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- The statement is made in close proximity to the request for contributions, during the same telephone call, by the telephone solicitor; and
- Any written confirmation or billing sent to a person pledging to contribute during the telephone solicitation complies with the requirements under Print Medium Solicitations.

Television

In the case of solicitation by television the following two requirements are met:

- The solicitation includes whichever the following statements the organization deems appropriate:
 - "Contributions or gifts to [name of organization] are not deductible as

- charitable contributions for Federal income tax purposes,"
- "Contributions or gifts to [name of organization] are not tax deductible," or
- "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- If the statement is spoken, it is in close proximity to the request for contributions; if the statement appears on the television screen, it is in large easily readable type appearing on the screen for at least five seconds.

Radio

In the case of a solicitation by radio the following two requirements are met:

- The solicitation includes whichever of the following statements the organization deems appropriate:
 - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
 - "Contributions or gifts to [name of organization] are not tax deductible," or
 - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- The statement is made in close proximity to the request for contributions during the same radio solicitation announcement.

These safe harbors will remain in effect until further notice from the IRS. Please refer to the IRS by phone at (800) 829-3676, (202) 622-7352 for changes to these safe harbors and with any questions you might have pertaining to the safe harbors.

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FOOTNOTES:

1 This brochure serves as the small entity compliance guide to Commission regulations regarding Communications and Solicitations, as required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

2 The FEC recommends placing disclaimer notices on all campaign materials.

3 Please note that for communications listing several candidates, the disclaimer notice may state that the message was authorized by the candidates identified in the message or, if only certain candidates have authorized it, by those candidates identified with an asterisk (AO 2004-37 [PDF])

4 These examples do not constitute the only ways to satisfy the color contrast requirement.

5 For additional information on broadcast advertising (e.g., radio, TV), please contact the Federal Communications Commission at (202) 418-1440 or (202) 418-

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7096 (for cable broadcasts).

6 The restricted class includes the executive and administrative personnel of the organization, its stockholders, or its members (noncorporate), and their families. See 11 CFR 114.1(j). See also 11 CFR 114.5 (g)(1) and (2); 114.7 (a) and (c).

This publication provides guidance on certain aspects of federal campaign finance law. This publication is not intended to replace the law or to change its meaning, nor does this publication create or confer any rights for or on any person or bind the Federal Election Commission (Commission) or the public. The reader is encouraged also to consult the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 et seq.), Commission regulations (Title 11 of the Code of Federal Regulations), Commission advisory opinions, and applicable court decisions. For further information, please contact:

Federal Election Commission □ 999 E Street, NW □ Washington, DC 20463
□ (800) 424-9530; (202) 694-1100 □ info@fec.gov □ www.fec.gov

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